IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.294 OF 1998.

Shri Maharudrappa Shankarappa
Chakote & ors. : Appellants.

versus

Shri Pandurang Tukaram Jadhav
and ors. : Respondents.

Mr.S.R.Borulkar for the appellants.
None for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 7th March 2005.

ORAL ORDER

1. Heard advocate for the appellants. Nobody is present for the respondents though they are served. The appeal against Respondent No.2 abates as per the Registrar's order dated 5.10.1999. The appeal is filed by the original

claimants. This appeal arises out of a common judgment given by the Motor Accidents Claims Tribunal, Pune on 16th December 1996 in a Group of Claim Application. The present appellants are concerned with Claim Application No.424 of 1985 wherein they had claimed Rs.5,30,000/- from the present respondents and, whereas the tribunal has awarded only Rs.50,500/- against all the respondents.

2. The counsel for the appellants made two submissions only. Firstly according to him, it had come on record that the deceased was earning Rs.5000/- per month. But he ultimately conceded that even if the figure of Rs.2250/- per month for the income of the deceased, as taken by the tribunal, is accepted, the dependency factor at Rs.800/- per month, as taken by the tribunal, was not at all proper and justified. He contended that the deceased was unmarried. He was 24 years of age. And, therefore, his contribution to the family should have been taken as 2/3rd and 1/3rd should have been deducted from his personal expenditure and, therefore, 2/3rd of Rs.2250/- comes to Rs.1500/-. Secondly according to him, the tribunal committed an error in applying

multiplier of 10 only because the parents, who were the claimants, on the date of accident or application were 55 years and 50 years of age and multiplier of 12 should have been adopted.

. Thirdly, he contended that in this accident, the tribunal came to the conclusion that it was a case of contributory negligence of the driver of the vehicle in which the deceased was travelling and that of the vehicle that had collided with was equal and, this finding, according to him, is totally wrong and, there is nothing on record to come to the conclusion that the collusion between the car and the truck was because of the contributory negligence. He drew my attention to para 17 of the judgment in this regard.

3 The accident in question occurred on 17.2.1985 at about 2.40 a.m. near Milage Stone, No.32/3, near Vakhari village on Pune-Solapur highway. At that time all the four deceased persons were travelling by car from Solapur to Pune. There was a collusion between the car and the truck No.MTS 6195 coming from opposite direction i.e. from Pune side and going to

Solapur side. In this background the tribunal held that there was no evidence of an eye witness. One of the inmates of the car was Ramesh Chakote who survived from the said accident. But he has not been examined. The driver of truck - Opponent No.1 did not enter the witness box. It is clear from para 18 of the judgment that, the tribunal came to the conclusion of contributory negligence only on the basis of panchanama. The tribunal noted from the panchanama that this accident occurred on a bridge near Milage Stone No.32/2. The width of the road at the spot of accident was 26 ft. The distance between the truck and the car, after the accident, was about 578 ft. There were break marks of the car up to the distance of 30 ft and the accident occurred in the middle of the road. From these circumstances, the tribunal came to the conclusion that it was a case of contributory negligence because it was head-on collusion and both the vehicles were in speed. I do not find this finding of the tribunal any where wrong. It is true that the driver of the vehicle was not examined. Even though he was Opponent No.1 in the claim petition and, counsel for the appellants contended that adverse inference

should have been drawn against him.

. As against this, what is apparent from the record is that Ramesh Chakote who was the occupant of the car was also not examined by the claimants. But in my opinion, Opponent No.1 was there to resist the claim. It was his duty to examine himself and to state before the Court as to how the accident occurred. His non-examination is, therefore, a strong circumstance from which the court could draw adverse inference against him. It appears from the record of the Claim Petition No.424 of 1985 that Opponent No.2 was duly served but he did not remain present and, therefore, the Court proceeded exparte against him, and respondent No.2 did not at all file their written statement to the claim petition. It was only the Insurance Company that cared to file written statement and it is at Exhibit 48.

4. Therefore, this is a case where Respondent Nos. 1 and 2 in the present appeal were duly served but they did not file their written statement explaining the manner in which the accident occurred. The driver of the truck

was bound to know about this aspect of the matter. Even the witnesses of the complainant were not cross examined and, in these, circumstances, as rightly argued by the counsel for the appellants, the tribunal ought to have drawn adverse inference against the respondents, particularly the driver. Therefore, even though the court may be correct in coming to the conclusion that it was a case of contributory negligence, the ratio of 50-50% as decided by the Court does not appear to be proper and the ratio has to be 60% and 40% i.e. 60% was the liability of the truck driver and 40% was the liability of the car driver.

5. So far as quantum of the compensation is concerned, the income of the deceased is required to be accepted as Rs.2250/- per month. His monthly contribution to the family was Rs.1500/-. The age of his parents at the time of application was 55 years of the father and 50 years of the mother and, the sisters were 20 years and 16 years respectively. Therefore, multiplier of 12 should have been adopted. Therefore, 2/3d of Rs.2250 comes to Rs.1500. Hence Rs.1500/- x 12 x 12 = Rs.2,16,000/-. 60% of Rs.2,16,000/- comes

to Rs.1,29,600/-. The tribunal has awarded Rs.2000/- on account of funeral expenses and Rs.3,000/- on account of loss of love and affection. This is not proper compensation and at least Rs.20,000/- ought to have been awarded. Therefore, the claimants are entitled to Rs.15,000/- more towards funeral charges and loss of love and affection. The figure therefore comes to Rs.1,29,600/- + Rs.15,000/-. The claimants are entitled to Rs.1,44,600/-. Hence I pass the following order :-

:ORDER:

. The appeal is partly allowed.

Respondents to pay to the appellants Rs.1,44,600/- including the amount of Rs.50,500/- with interest at the rate granted by the tribunal and, the respondents will bear the costs of this appeal.

[D.G.DESHPANDE]

07/03/2005 JUDGE.